



Town Council Agenda Report

SUBJECT: Resolution

CONTACT PERSON/NUMBER: Will Allen / 797-2093

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH AP ADLER OAKES, LTD. FOR LANDSCAPE MAINTENANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The site plan for the Flexspace at Oakes Road development, 4350 Oakes Road, includes landscaping which is adjacent to the development. This includes two water retention areas as well as along the street right-of-way which abuts the Oakes Road improvement project. The road right-of-way and the water retention areas were developed in a cooperative effort between the Town and the adjoining property owner. The subject landscape maintenance agreement provides that the owner of Flexspace at Oakes Road, AP Adler Oakes, Ltd., will maintain these landscaped areas. The property owner agrees to maintain the landscaping features which include 60 trees and under story vegetation. The site plan was approved by Town Council subject to the staff report and Site Plan Committee reports which required the wet retention area on the east side of Oakes Road to be landscaped.

PREVIOUS ACTIONS: The Town Council approved the site plan for this development at the July 15, 1998 meeting. (Motion carried 5-0)

FISCAL IMPACT: Not Applicable

Additional Comments: Maintenance of the public areas will be provided by the developer so the Town would not have to maintain.

RECOMMENDATION(S): Motion to approve the Resolution.

Attachment(s): Resolution
Landscape Maintenance Agreement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH AP ADLER OAKES, LTD. FOR LANDSCAPE MAINTENANCE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, AP Adler Oakes, Ltd., a developer is developing the site at 4350 Oakes Road as a mixed use development, and

WHEREAS, the Town of Davie owns adjacent property which is used for water retention as well as the adjoining Oakes Road right-of-way, and

WHEREAS, the site plan has been approved for the development at 4350 Oakes Road, known as Flexspace at Oakes Road, which includes the provision of landscape materials on public property, and

WHEREAS, a Landscape Maintenance Agreement has been prepared requiring that AP Adler Oakes, Ltd., or its successors and assigns, maintain the landscaping on the public property.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council does hereby authorize the Mayor to execute the Landscape Maintenance Agreement with AP Adler Oakes, Ltd., a copy of which is attached hereto as Exhibit "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND APPROVED THIS ____ DAY OF _____, 2000.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2000.

LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT ("Agreement"), is made and entered into this ____ day of February, 2000, by and between AP Adler Oakes Ltd., a Florida limited partnership with a business address at 1400 NW 107th Avenue, Miami, Florida 33172-2704 ("Developer"); and Town of Davie, a municipal corporation of the State of Florida, existing under the Laws of Florida, with a business address at 6591 Orange Drive Davie, Florida 33314 ("Town").

WITNESSETH

WHEREAS, Developer is the owner and operator of a certain mixed use real estate development known as Flexspace at Oakes Road, located at 4350 Oakes Road, in the Town of Davie, Florida; and

WHEREAS, the Town is the owner of two adjoining water retention areas described on Exhibits A and B along with the adjacent Oakes Road right-of-way which Developer and Town agree are to be landscaped and maintained by periodic trimming, cutting, mowing, fertilizing, litter pickup, and necessary replanting of landscape materials; and

WHEREAS, Developer is willing to maintain the Town Land in conjunction with its development and operation of its mixed use development under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of these premises Developer and Town do hereby agree as follows:

1. Developer will, at the sole cost and expense of Developer, install or cause to be installed, on the Town Land the landscaping features described on the approved site plan for Flexspace at Oakes Road particularly the landscape plan dated 8/1/98 as prepared by Alan D. Kay, Inc.
2. During the term of this Agreement, Developer will, at Developer's sole cost and expense, maintain the landscaping features on the Town Land described on Exhibits A and B along with the adjacent Oakes Road right-of-way which maintenance shall include, but not be limited to, periodic trimming, cutting, mowing, fertilizing, litter pickup, and necessary replanting of landscape materials as more fully described in Exhibit C, attached hereto.
3. If at any time after the Developer has assumed the Maintenance, it shall come to the attention of the Town that the Town Land is not properly maintained pursuant to the terms of this Agreement, the Town shall issue a written notice that a deficiency or deficiencies exist(s) and the nature of such deficiency, by sending a certified letter, return receipt requested, to the Developer, to place said Developer on notice thereof. Developer shall have a period of thirty (30) calendar days from the date of the notice and not the date of receipt to correct the cited deficiencies. If within this time period, Developer has not cured the specified deficiencies, the Town may at its option proceed as follows:
 - (a) Proceed to cure the uncured deficiencies, after notice to the Developer, with Town contractors or personnel at Developer's sole cost and expense; or
 - (b) Declare a default under the approved Site Plan for Developer's Land; or

(c) Terminate the Agreement in accordance with Paragraph 4 of this Agreement.

4. Developer hereby grants unto Town a lien upon Developer's land for purposes of securing Developer's or Developer's successors in interest, obligations under paragraph 3(a) above. In the event the Town elects the remedy provided for in paragraph 3(a) above and Developer, its successors or assigns, fails to pay to the Town all sums required to be expended by the Town to cure uncured deficiencies within thirty (30) days of demand for payment by the Town, then the Town may foreclose on its lien on Developer's property in the same manner as it would foreclose on a mortgage. The lien created by this paragraph shall remain in existence unless and until this Agreement is terminated by the parties in accordance with its terms.
5. This Agreement may be terminated by Town following ten (10) days written notice to Developer, or its successors and assigns, in which event the parties hereto shall file in the Official Records of Broward County, a cancellation of this Agreement.
6. The term of this Agreement commences upon execution hereof by both parties.
7. To the extent permitted by law, the Developer, its successors or assigns, shall indemnify and hold harmless the Town, its officers and employees from all suits, actions, claims and liability arising out of the Developer's negligent performance or or failure to perform the Maintenance under this Agreement.
8. This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
9. This Agreement may not be assigned or transferred by Developer, except pursuant to a sale of Developer's Land. This Agreement constitutes a covenant running with the Town Land and an encumbrance on Developer's Land. Upon the sale of Developer's Land, the obligations of Developer hereunder shall pass automatically to the grantee of Developer's Land, and Developer shall have no further rights, duties or obligations hereunder.
10. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail.
11. In the event of litigation concerning enforcement of this agreement, the prevailing party shall be entitled to recover attorney's fees from the non-prevailing party including appellate proceedings.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first written above.

TOWN OF DAVIE

AP ADLER OAKES, LTD., a Florida
limited partnership, acting by and
through its sole general partner.

By _____
Harry Venis, Mayor

By: _____, a Florida
corporation

Attest: _____
Gail Reinfeld, Town Clerk

By:
Name: _____
Title: _____

(SEAL)

APPROVED AS TO FORM:

BY:

Town Attorney

STATE OF FLORIDA)
) SS:

COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2000,
by _____, the _____ of _____, a General
Partner of AP Adler Oakes, Ltd., a Florida limited partnership, who is personally known to
me or who has produced _____ as identification.

My Commission Expires:

NOTARY PUBLIC

Sign:

Print:

(SEAL)

Exhibit 'A' - 1

SURVEY NOTES:

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. BEARINGS SHOWN HEREON ARE RELATIVE TO AN ASSUMED BEARING OF NORTH 89°41'59" EAST ALONG THE NORTH LINE OF THE NORTHEAST ONE-QUARTER, SECTION 25, TOWNSHIP 50 SOUTH, RANGE 41 EAST.
4. THE "LAND DESCRIPTION" HEREON WAS PREPARED BY THE SURVEYOR.
5. THIS SKETCH IS NOT A BOUNDARY SURVEY AS SUCH.

LAND DESCRIPTION:

A PORTION OF TRACT 3 AND A PORTION OF THAT CERTAIN 30 FOOT AND 20 FOOT ROAD RIGHT OF WAY, SECTION 25, TOWNSHIP 50 SOUTH, RANGE 41 EAST, NEWMAN'S SURVEY, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY, FLORIDA, TOGETHER WITH A PORTION THE "I.D.F. PLAT", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 87, PAGE 15, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID "I.D.F. PLAT", THENCE SOUTH 01°47'58" EAST ALONG THE EAST LINE OF SAID "I.D.F. PLAT", 305.50 FEET; THENCE DEPARTING THE EAST LINE OF SAID "I.D.F. PLAT" SOUTH 89°43'12" EAST, 61.08 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 369.00 FEET, (A RADIAL LINE TO SAID POINT BEARS SOUTH 89°43'12" EAST) SAME BEING THE POINT OF BEGINNING; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 41°59'07", AN ARC LENGTH 270.40 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 19.50 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 41°42'18", AN ARC LENGTH 14.19 FEET; THENCE NORTH 04°44'35" WEST, 22.71 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE CONCAVE TO SOUTHEAST HAVING A RADIUS OF 45.00 FEET (A RADIAL LINE TO SAID POINT BEARS NORTH 85°45'10" WEST); THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 73°56'53", AN ARC LENGTH OF 58.08 FEET; THENCE NORTH 78°11'43" EAST, 27.45 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 59.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE 28°30'45", AN ARC LENGTH 29.36 FEET TO THE NORTH LINE OF SAID CERTAIN 20 FOOT ROAD RIGHT OF WAY, SAME BEING THE NORTH LINE OF THE NORTHEAST ONE-QUARTER (NE. 1/4) OF SAID SECTION 25; THENCE NORTH 88°41'59" EAST ALONG THE NORTH LINE OF SAID CERTAIN 20 FOOT ROAD RIGHT OF WAY AND THE NORTH LINE OF THE NORTHEAST ONE-QUARTER (NE. 1/4) OF SAID SECTION 25, A DISTANCE OF 217.91 FEET; THENCE DEPARTING THE NORTH LINE OF SAID CERTAIN 20' ROAD RIGHT OF WAY AND THE NORTH LINE OF THE NORTHEAST ONE-QUARTER (NE. 1/4) OF SAID SECTION 25 SOUTH 18°27'04" EAST, 34.69 FEET; THENCE SOUTH 14°53'25" WEST, 664.24 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 18.25 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 125°58'54", AN ARC LENGTH 40.13 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 36.50 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 39°24'22", AN ARC DISTANCE OF 25.10 FEET; THENCE NORTH 05°47'14" WEST, 75.70 FEET; THENCE NORTH 00°16'48" EAST, 236.20 FEET TO THE POINT OF BEGINNING;

SAID LANDS LYING IN BROWARD COUNTY, FLORIDA, CONTAINING 2.439 ACRES (106,241 SQUARE FEET) MORE OR LESS.

CERTIFICATE:

I HEREBY CERTIFY THAT THE ATTACHED SKETCH OF DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS DELINEATED UNDER MY DIRECTION ON JANUARY 18, 1999. I FURTHER CERTIFY THAT THIS SKETCH OF DESCRIPTION MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

KEITH AND SCHNARS, P.A.
ENGINEERS-PLANNERS-SURVEYORS

[Signature]
BY: A.M. LAZOWICK, P.S.M.
FLORIDA REGISTRATION NO. 4105

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SKETCH OF DESCRIPTION

A PORTION OF TRACT 3 AND THAT CERTAIN 30' & 20' ROAD RIGHT OF WAY NEWMAN'S SURVEY (P.B. 2, PG. 26, M.D.C.R.) SECTION 25, TOWNSHIP 50 SOUTH, RANGE 41 EAST, TOGETHER WITH A PORTION OF "I.D.F. PLAT" (P.B. 87, PG. 15, B.C.R.) BROWARD COUNTY, FLORIDA

DATE 1-18-99

SCALE 1"=80'

FIELD BK. N.A.

OWNG. BY T.D.I.

CHK. BY R.K.K.

DATE REVISIONS

DATE	REVISIONS



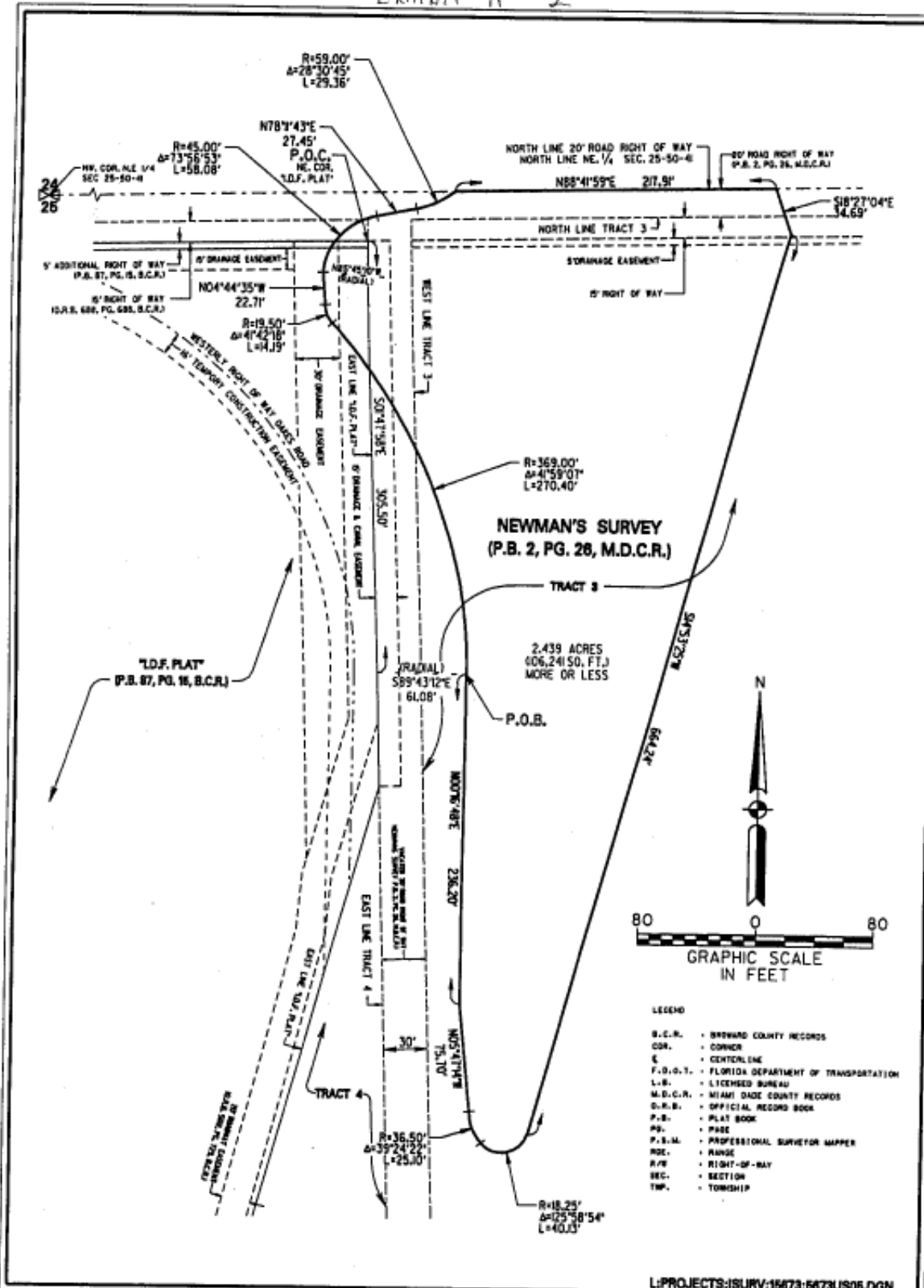
KEITH and SCHNARS, P.A.

L.B. 1337
ENGINEERS - PLANNERS - SURVEYORS
6000 N. ANDREWS AVE., FL. LAKELAND, FL. 33809-2001 (850) 715-4666

SHEET NO. 1 OF 2 SHEETS

DRAWING NO. 15731L

Exhibit 'A' - 2



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SKETCH OF DESCRIPTION		DATE	REVISIONS
A PORTION OF TRACT 3 AND THAT CERTAIN 30' & 20' ROAD RIGHT OF WAY NEWMAN'S SURVEY (P.B. 2, PG. 26, M.D.C.R.) SECTION 26, TOWNSHIP 50 SOUTH, RANGE 41 EAST, TOGETHER WITH A PORTION OF "D.F. PLAT" (P.B. 87, PG. 16, B.C.R.)		1-18-99	
BROWARD COUNTY, FLORIDA		SCALE 1"=80'	
FIELD BK. N.A.		DATE	
DWNG. BY T.D.J.		REVISIONS	
CHK. BY R.K.K.			

KEITH and SCHNARS, P.A.
L.B. 0337
ENGINEERS - PLANNERS - SURVEYORS
6300 S. MOWERS AVE., F.L. LAKEDALE, FL. 33991-232 (813) 716-6666

SHEET NO. 2 OF 2 SHEETS

DRAWING NO. 15731L

Exhibit 'B' - 1

SURVEY NOTES:

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. BEARINGS SHOWN HEREON ARE RELATIVE TO AN ASSUMED BEARING OF NORTH 14°51'01" EAST ALONG THE EAST LINE OF PARCEL "A", IDF PLAT, PLAT BOOK 87, PAGE 15, BROWARD COUNTY RECORDS.
4. THE "LAND DESCRIPTION" HEREON WAS PREPARED BY THE SURVEYOR.
5. THIS SKETCH IS NOT A BOUNDARY SURVEY AS SUCH.

LAND DESCRIPTION:

PORTIONS OF TRACTS 3, 4 AND THAT CERTAIN 30 FOOT ROAD RIGHT OF WAY, NEWMAN'S SURVEY, SECTION 25, TOWNSHIP 50, SOUTH RANGE 41 EAST, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF PARCEL "A", "J.D.F. PLAT", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 87, PAGE 15, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE NORTH 14°51'01" EAST ALONG THE EAST LINE OF SAID PARCEL "A", 575.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 14°51'01" EAST ALONG THE EAST LINE OF SAID PARCEL "A", 306.25 FEET; THENCE SOUTH 00°16'48" WEST, 152.74 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 187.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 62°18'20", AN ARC LENGTH 203.35 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 44.50 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 38°57'20", AN ARC LENGTH 30.26 FEET; THENCE SOUTH 14°47'24" WEST, 13.90 FEET; THENCE NORTH 73°17'39" WEST, 202.07 FEET TO THE POINT OF BEGINNING;

SAID LANDS LYING IN BROWARD COUNTY, FLORIDA, CONTAINING 0.438 ACRE (19,081 SQUARE FEET) MORE OR LESS.

CERTIFICATE:

I HEREBY CERTIFY THAT THE ATTACHED SKETCH OF DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS DELINEATED UNDER MY DIRECTION ON JANUARY 18, 1999. I FURTHER CERTIFY THAT THIS SKETCH OF DESCRIPTION MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES. SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

KEITH AND SCHNARS, P.A.
ENGINEERS-PLANNERS-SURVEYORS

A.M. Lazowick
BY: A.M. LAZOWICK, P.S.M.
FLORIDA REGISTRATION NO. 4105

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SKETCH OF DESCRIPTION
A PORTION OF TRACTS 3 & 4 AND THAT CERTAIN 30' ROAD RIGHT OF WAY NEWMAN'S SURVEY (P.B. 2, PG. 26, M.D.C.R.) SECTION 25, TOWNSHIP 50 SOUTH, RANGE 41 EAST BROWARD COUNTY, FLORIDA

DATE	1-18-99	DATE	REVISIONS
SCALE	1"=50'		
FIELD BK.	NA		
DWNG. BY	T.D.I.		
CHK. BY	R.K.K.		

KEITH AND SCHNARS, P.A.
LB 1337
ENGINEERS - PLANNERS - SURVEYORS
6000 N. ANDERS AVE., FL. LAKEWATER, FL. 33474-3322 (561) 716-466
SHEET NO. 1 OF 2 SHEETS
DRAWING NO. 15731-

A PORTION OF TRACTS 3 & 4 AND THAT CERTAIN 30' ROAD RIGHT OF WAY NEWMAN'S SURVEY (P.B. 2, PG. 26, M.D.C.R.) SECTION 25, TOWNSHIP 50 SOUTH, RANGE 41 EAST BROWARD COUNTY, FLORIDA

CHK. BY R.K.K.

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LB 1337
ENGINEERS - PLANNERS - SURVEYORS
100 N. WINDYWAY AVE., FT. LAUDERDALE, FL. 33309-252 754-876-4444

DRAWING NO. 15731L-

EXHIBIT C
LANDSCAPE MAINTENANCE SCHEDULE

1. The grass shall be maintained by mowing, edging and weed eating no less than every fourteen (14) calendar days. All litter shall be removed prior to mowing. All curbs, edge of pavement and sidewalks shall be edged. All weeds shall be removed from curbing and sidewalks. Weed eating needs to be done around all sign posts, telephone and power poles, fire hydrants, as well as under all guardrails. All debris shall be removed from curb lines after mowing.
2. Weed eradication will be required for all areas. Weed eradication shall include but not be limited to herbicide spraying.
3. Insecticide spray will be applied as required, including but not limited to nutritional sprays as required.
4. Tree pruning is required a minimum of once every other year by a certified arborist.
5. In order to maintain the shrub material in its natural form, shrub pruning shall be no less than once every ninety (90) days.
6. Sod must be replaced within thirty (30) calendar days of observation and notification by the Town that sod has been removed, died or destroyed. The owner shall replace the sod with a solid, weed free sod, installed level to grade, and top dressed with one half inch of lawn sand.
7. All landscape beds shall be remulched once per year with one inch of cypress mulch in order to maintain a consistent overall compacted mulch depth of three inches.
8. Time release fertilizer shall be applied according to the manufacturer's recommendation a minimum of two applications per year.
9. All plant quality shall be maintained as Florida #1 or better as defined by the Florida Department of Agriculture, Grades & Standards published in 1998. Should any shrub or tree fall below Florida #1, the Town of Davie shall require replacement of said plant material to the grade and size of the existing similar tree/shrub material on this site.